

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

NOV 20 2009

JOHN F. CORCORAN, CLERK  
BY: *S. Taylor*  
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JOSEPH KESTNER

Plaintiff,

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

Civil Action No. 5:08cv00113

**FINAL ORDER**

By: Samuel G. Wilson  
United States District Court

This case is before the court on the objection of defendant, Michael J. Astrue, to the Magistrate Judge's report setting forth his proposed findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The court has reviewed the administrative record, the Magistrate Judge's report, and defendant's objections to that report and the court concludes that the Magistrate Judge's report is substantially correct and accordingly adopts that report.<sup>1</sup>

Accordingly, it is **ORDERED** and **ADJUDGED** that defendant's motion for summary judgment is **DENIED**, judgment is **GRANTED** to the plaintiff, reversing the final decision of the Commissioner and recommitting the case to the Commissioner solely for the purpose of calculating and paying proper benefits. This case is **ORDERED** stricken from the docket of the court.

**ENTER:** This November 20, 2009.

  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> The Magistrate Judge concluded that the Commissioner's final decision was not supported by substantial evidence on a number of grounds, including the Commissioner's failure to consider whether the plaintiff qualified for disability pursuant to the "worn-out worker" rule, 20 C.F.R. § 404.1562(a). The court does not adopt the portion of the Magistrate Judge's report concerning the "worn-out worker" rule.